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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC			CHANKONG, DOHM	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/777,884	<b>Applicant(s)</b> JOHANSON ET AL.
	<b>Examiner</b> DOHM CHANKONG	<b>Art Unit</b> 2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 March 2010.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 3,5,19,30-35 and 37 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 3, 5, 19, 30-35, and 37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date, \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This final rejection is in response to Applicant's amendment filed on 3/30/2010.

Applicant amends claims 19 and 32, cancels claims 4 and 36, and previously cancelled claims 1, 2, 4, 6-18, 20-29, and 36. Accordingly, claims 3, 5, 19, 30-35, and 37 are presented for further examination.

### **I. RESPONSE TO ARGUMENTS**

Because of the new limitation incorporated into claims 19 and 32, Applicant's arguments are moot in view of the new ground of rejection. Applicant also argues that Fumarolo does not teach selecting a device from a plurality of devices that are not grouped.

#### **A. *Fumarolo teaches selecting a device from among a plurality of devices that are not grouped.***

Applicant argues that Fumarolo teaches selecting a device from among a plurality of nearby grouped devices. Applicant points to Fumarolo's teaching of "talk groups." However, Fumarolo clearly discloses that a user selects a communication unit prior to grouping the units into a talk group [Fig. 6 «items 605 and 613»]. Thus, Applicant's argument is not persuasive.

#### **B. Reasons for Finality**

The examiner notes that Applicant has incorporate the limitations of dependent claims 4 and 36 into parent independent claims 19 and 32. The examiner also notes the subject matter of the limitations have been previously considered by the examiner in previous actions. However, the addition of claim 4's limitation into claim 19 changes the scope of the invention because the limitation of claim 4 must now be considered with the limitations of claims 30 and 31.

In previous actions, the limitation of claim 4 only needed to be considered with parent claim 19. So by amending claim 19, the scope of the invention is changed which necessitates a new ground of rejection. Because the new ground of rejection was necessitated by Applicant's amendment, this action is properly made final.

## **II. CLAIM REJECTIONS - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

### **A. Claims 19 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.**

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation is a negative limitation (i.e., "selecting a device from among nearby devices *that are not grouped*") that is contradicted by Applicant's specification.

It is important to note that the limitation "that are not grouped" is neither described or defined in Applicant's specification. The limitation is therefore given its broadest reasonable interpretation consistent with Applicant's specification.

Contrary to Applicant's argument, Applicant's specification seems to suggest "grouping" all nearby devices [Applicant's printed publication 20030018744, 0015]. Specifically, the specification states that a first device "communicates with all nearby electronic devices to obtain

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the GPS location of each [nearby] device.” The first device “then displays where each other electronic device is in relation” to the first device.

Displaying all nearby devices is in effect “grouping” all nearby devices. Moreover, claim 3 states displaying only those devices “within a certain range.” This limitation essentially requires “grouping” all nearby devices that are “within a certain range.” For the foregoing reasons, Applicant’s arguments are not persuasive. The examiner maintains that the limitation is not supported (and in fact contradicted) by the specification.

The issue is that Applicant is attempting to overcome the prior art by using claim terminology from the cited references rather than Applicant’s own specification. Applicant’s attempt to distinguish the instant invention over the cited references would prove more fruitful if the claim terms were actually described in or defined by Applicant’s own specification.

### **III. CLAIM REJECTIONS - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**A. Claims 3, 5, 19, 30-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fumarolo et al.*, U.S. Patent Number 6,204,844 (“*Fumarolo*”), in view of *Bork et al.*, U.S. Patent Number 6,246,376 (“*Bork*”), in further view *Tognazzini*, U.S. Patent No. 5,906,293.**

Some claims will be discussed together. Those claims which are essentially the same are rejected under the same rationale applied to the described claim.

### **Claims 19 and 32**

*Fumarolo* as modified by *Bork* and *Goldberg* discloses a method for selecting a nearby device, from among a plurality of nearby devices that are not grouped [*Fumarolo*, column 3 «lines 29-36»: selecting a device based on its location on a map *and then* grouping the devices based after the device has been selected] to communicate with, comprising the steps of:

transmitting a Bluetooth signal (*Bork*, column 4, lines 60-64 and column 5, lines 13-17);

detecting a plurality of Bluetooth signals from the nearby devices that are not grouped, each signal containing GPS coordinates of at least one nearby device (*Bork*, column 4, line 64 through column 5, line 2, for the use of Bluetooth, and *Fumarolo*, column 5, lines 35-41 and column 13, lines 32-42) and a device type of the at least one nearby device [*Tognazzini*, Fig. 7 «item 760» | column 7 «lines 47-65»]; and

selecting one of the nearby devices that are not grouped associated with one of the detected signals to communicate with based on the received GPS coordinates (*Fumarolo*, column 5, line 61 through column 6, line 12 and column 13, lines 32-42).

As indicated in the foregoing mapping, *Fumarolo* did not explicitly state (1) that his system's devices could communicate using Bluetooth signals or (2) sending a signal containing a device type of at least one nearby device. However, such a feature was well known in the art at the time of Applicant's invention as evidenced by *Bork* and *Tognazzini*.

1. *Bork* discloses transferring a signal containing GPS coordinates of a nearby device using Bluetooth.

*Fumarolo*'s system does utilize a wireless infrastructure and it could easily be adapted to operate using any type of known wireless network. Furthermore, the ability to transfer GPS

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coordinates between devices using Bluetooth was well known in the art at the time of the applicant's invention as evidenced by *Bork*.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of *Fumarolo* by adding the ability to transmit and detect Bluetooth signals in such a communications system as provided by *Bork*. Here the combination satisfies the need for a GPS device that can communicate its location with another trusted device by using Bluetooth or a cellular link. See *Bork*, column 3, lines 29-34. This rationale also applies to those dependent claims utilizing the same combination.

2. *Tognazzini discloses transferring a signal containing a device type of a nearby device.*

Like *Fumarolo*, *Tognazzini* is directed to a system for detecting and selecting a nearby device from among a plurality of devices [*Tognazzini*, abstract]. Also like *Fumarolo*, *Tognazzini* discloses transferring signals to nearby devices that contain information in order to enable the detection of the location of the nearby device [Fig. 7: "GPS Coordinates"].

*Tognazzini* further discloses detecting a device type of the nearby device [Fig. 7 «item 760»: car type | Fig. 8 «items 840, 845, 855, 865»: detecting the source of the packet where the device types include different vehicles, proximity radar, stationary radar]. It would have been obvious to one of ordinary skill in the art to have modified *Fumarolo* to include the device type as taught in *Tognazzini*.

Such a modification would have improved *Fumarolo*'s system by enabling specific icons to be displayed on the map that correspond to the different vehicle types [*Tognazzini*, column 3 «lines 35-38»: different icons based on source of packet].

**Claims 30 and 33**

*Fumarolo* as modified by *Bork* and *Tognazzini* discloses the method as in claim 19 further comprising the step of: displaying the location of each nearby device associated with received GPS coordinates (*Fumarolo*, column 5, lines 35-41); and selecting the nearby device to communicate with based on the displayed locations (*Fumarolo*, column 13, lines 43-58).

**Claims 31 and 34**

*Fumarolo* as modified by *Bork Tognazzini* discloses the method as in claim 30 further comprising selecting a nearby device associated with a shortest location (*Fumarolo*, column 16, lines 8-26 and column 17, lines 25-42).

**Claims 3 and 35**

*Fumarolo* as modified by *Bork* and *Tognazzini* discloses the method as in claim 30 further comprising displaying only those nearby devices within a certain range (*Fumarolo*, column 16, line 54 through column 17, line 6).

**Claims 5 and 37**

*Fumarolo* as modified by *Bork* and *Tognazzini* discloses the method as in claim 4 further comprising the step of displaying the type of nearby device associated with each detected signal [*Tognazzini*, column 8 «lines 4-24»]: determining the source (i.e., device type) of the packet (e.g., vehicle, stationary radar, proximity radar) and then changing the icon based on the source of the packet. The different icons represent the "device type" of the source].

See rejection of claims 19 and 32 for reasons to combine *Fumarolo* and *Tognazzini*.

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#### IV. CONCLUSION

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOHM CHANKONG whose telephone number is (571)272-3942. The examiner can normally be reached on Monday to Friday [10 am - 6 pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on (571)272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DOHM CHANKONG/  
Primary Examiner, Art Unit 2452